

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ENTERTAINMENT MEDIA TRUST,	)	MB Docket No. 19-156
DENNIS J. WATKINS, TRUSTEE)	
)	
Applications to Renew License:)	
)	
KFTK(AM) (formerly WQQX(AM)), East St.	)	Facility ID No. 72815
Louis, Illinois	)	File No: BR-20120709ACP
)	
WQQW(AM), Highland, Illinois	)	Facility ID No. 90598
	)	File No. BR-20120709AC0
)	
KZQZ(AM), St. Louis, Missouri	)	Facility ID No. 72391
	)	File No. BR-20120921AAW
)	
KQQZ(AM), DeSoto, Missouri	)	Facility ID No. 5281
	)	File No. BR-20120921ABA
)	
Application for Consent to Assignment of)	
Licenses:)	
)	
KFTK(AM) (formerly WQQX(AM)), East St.	)	Facility ID No. 72815
Louis, Illinois	)	File No: BAL-20160919ADH
)	
WQQW(AM), Highland, Illinois	)	Facility ID No. 90598
	)	File No. BAL-20160919ADI
)	
KZQZ(AM), St. Louis, Missouri	)	Facility ID No. 72391
	)	File No. BAL-20160919ADJ
)	
KQQZ(AM), DeSoto, Missouri	)	Facility ID No. 5281
	)	File No. BAL-0160919ADK
)	
Application for Permit to Construct New Station:)	
)	
W275CS, Highland, Illinois	)	Facility ID No. 200438
	)	File Nos. BNPFT-20170726AEF and
	)	BNPFT-20180314AAO
)	

To: Marlene H. Dortch, Secretary
Attn: Administrative Law Judge Jane Hinckley Halprin

REPLY TO OPPOSITIONS

1. Pursuant to the Order entered September 18, 2019 (FCC 19M-10), Donald M. Samson (“Trustee”), court-appointed trustee of Entertainment Media Trust, Dennis J. Watkins, Trustee (“EMT”), hereby replies to the Oppositions to Motion for Stay filed by Petitioner Mark Kern on September 16, 2019 (the “Kern Opposition”) and the Enforcement Bureau’s Opposition to EMT’s Motion for Stay filed on September 17, 2019 (the “EB Opposition” and, together with the Kern Opposition, the “Oppositions”).

2. Trustee appreciates the Presiding Judge’s grant of leave to reply, as counsel to EMT was constrained at the time of its Motion for Stay to offer a fully fleshed-out and vigorous argument in support thereof due to the time constraints presented by the short turnaround from the bankruptcy filing and the ambiguity of counsels’ status vis-a-vis the Trustee. Trustee has had a full opportunity to be read-in on this case and is in the process of seeking approval of the Bankruptcy Court of the appointment of undersigned counsel as co-counsel to Trustee. Thus, Trustee now, by undersigned counsel, addresses the issues raised in the Oppositions in turn:

3. **Bankruptcy exception does not apply.** The Kern Opposition relies on two Commission decisions for the proposition that the automatic stay provision of the Bankruptcy Code does not apply to the instant proceeding because of the Code’s regulatory exception.¹ Kern fails to note that the bankruptcies at the heart of these two decisions were filed under Chapter 11 of the Bankruptcy Code, not Chapter 7. In a Chapter 11 scenario, the debtor attains “debtor-in-possession” status and remains, subject to judicial oversight, in control of the assets, with the

¹ Kern Opposition at 3-4, *citing Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Fifth Report and Order*, 25 FCC Rcd 13874, 13904-05 (2010) and *Emergency Application for Review and Request for Stay of Globalstar, L.P.*, Memorandum Opinion and Order, 19 FCC Rcd 11548, 11562-63 (2004).

intention of reorganizing, shedding debt, and resuming business with many or even most of the assets intact. A Chapter 7 bankruptcy is a wholly different matter wherein the debtor relinquishes control of the assets (which, in this case, includes the broadcast licenses at issue) to a trustee for the purpose of liquidating all of the assets, resolving/avoiding certain debts and obligations to avoid preferential treatments, and ultimately disposing of all of the assets and distributing the proceeds to all creditors.

4. The Trustee has already begun the process by inventorying the assets and soliciting offers from interested 3rd parties who seek to acquire the assets of the Chapter 7 estate (to date, there have been inquiries from three unrelated parties). Because a Chapter 11 proceeding would, at completion, leave the original debtor in control of the subject assets, it is therefore logical in that type of proceeding for the automatic stay exception to be applied, as the end result of a Chapter 11 proceeding is the same as at the beginning, albeit without certain debts remaining, and the purpose of the Commission proceeding remains unaffected. That is not the case in a Chapter 7 proceeding, where the end result is the liquidation of the assets which renders the Commission proceeding moot. Accordingly, it would be an exercise in futility to continue the Commission proceeding at this juncture, and would serve only to destroy the value of the assets that the Trustee is charged with liquidating.

5. The EB Opposition's cursory attention to the Bankruptcy Code's automatic stay provision also relies on cases which derive from Chapter 11 debtors. Moreover, the Enforcement Bureau cites *NextWave* for the proposition that "[i]t is beyond the jurisdiction of a court in a collateral proceeding [such as a bankruptcy proceeding] to mandate that a licensee be allowed to keep its license despite its failure to meet the conditions to which the licensee is subject." Trustee and EMT are asking for no such thing. In fact, it is asking for very nearly the opposite. It

is asking the FCC to stay its proceeding to allow a court in a collateral proceeding to allow EMT to *lose* its licenses (with the FCC's approval) even faster than it would were the FCC hearing proceeding to reach the conclusion sought by the Enforcement Bureau. Moreover, EMT is seeking to lose the licenses in such a way to preserve them for the public interest, which would not happen if the FCC simply cancels the licenses or EMT turns them in.

6. **Motion for Stay: Four Part Test.** Both Oppositions argue that the Motion for Stay was defective because it failed to demonstrate how it met the four-part test for stay: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.² As explained above, counsel to EMT filed the Motion for Stay with very little information available to it about the bankruptcy filing, so a full showing could not be made at the time. As demonstrated below, the Trustee and EMT satisfy each prong of the test and the Stay should therefore be granted without delay.

7. EMT and the Trustee are likely to prevail on the merits of a stay because, as noted above, prior Commission precedent advocating an exception to the automatic stay is predicated on Chapter 11 proceedings while this is a Chapter 7 proceeding with a wholly different outcome/result than a Chapter 11 proceeding. In addition, the Trustee has already filed a motion in the Bankruptcy Court seeking an order from that court to stay the Commission proceeding, which, if granted, the Commission is bound to comply with pending further order of the Bankruptcy Court. A copy of the motion is attached hereto at Exhibit A.

² See, e.g., *Tennis Channel v. Comcast Cable Communications, LLC*, Order, 27 FCC Rcd 9274, 9279, para. 17 (OGC 2012) (applying four-factor test in evaluating request to stay Commission order).

8. EMT will suffer irreparable harm if a stay is not granted. Discovery in any litigation is costly, and this proceeding is no exception – except that it might be exceptional how many discovery requests have already been demanded of EMT and how many more might be expected, if the past is prologue. EMT has already incurred, as of the date of this submission, nearly \$150,000 in attorney’s fees related to this proceeding, and we have not even completed the *first round* of written discovery. Continuing this proceeding will result in tremendous legal fees which will drastically reduce the potential proceeds from any Chapter 7 liquidation and leave little, if anything, for the Commission, should it seek to collect a forfeiture. Furthermore, the Trustee’s obligation is to preserve the maximum value of the estate of the debtor for liquidation purposes; continuation of the Commission proceeding serves only to undermine the duty of the Trustee by further diluting the value of the estate of the debtor to the detriment of all of the creditors, including the Commission.

9. Other interested parties will not be harmed if the requested stay is granted. The Enforcement Bureau and Mr. Kern will not be harmed by a stay to allow the bankruptcy to proceed. Because there are already known interested third-party buyers, it is anticipated a liquidation of all of the EMT assets can move swiftly. As previously discussed, Mr. Kern has waited seven years for the Commission to address his concerns;³ waiting an additional few months should not cause any further harm. Nor will the Enforcement Bureau be harmed by a

³ EMT appreciates and shares the frustrations of Mr. Kern that his arguments against the EMT licenses have remained unresolved for seven years. EMT finds it outrageous that the Media Bureau is permitted to essentially freeze a licensee’s ability to sell or seek financing with such a cloud of uncertainty for such a long time. In the *Hearing Designation Order*, the Media Bureau indicated it believed prior responses from EMT to its letter of inquiry (“LOI”) were less than complete. This is news to EMT, as it received no requests for further information, as is typical in these types of inquiries. EMT would have welcomed the opportunity to clarify the record and provide additional information to the Commission staff, which may have avoided the initiation of this proceeding.

relatively short delay. As stated by the Enforcement Bureau itself, the very purpose of this hearing proceeding is to determine “whether [EMT] is entitled to be and remain a Commission licensee.” EB Opposition at 4. Liquidation of the station licenses and the resulting termination of EMT’s tenure as an FCC licensee would moot the need for a drawn-out proceeding to reach a conclusion on these questions, and will accomplish the same end result sought by the Enforcement Bureau – the termination of EMT’s FCC license interests and the termination of any real-party-in-interest or unauthorized control over the licensees – far more efficiently than this proceeding will.

10. The Public Interest favors granting a stay. First, the economic impact of this proceeding on the stations’ ability to provide programming responsive to their communities of license already has been deleterious. One of the stations (WQQW) has already been forced off the due to technical issues, which EMT cannot now remedy because all of its limited resources have had to be deployed to this proceeding. Grant of stay for the duration of the Chapter 7 proceeding would allow Trustee to direct resources to the resumption of operations as part of his duty to preserve the assets, allowing EMT to fulfill its obligation to serve the public.

11. Second, grant of a stay would permit an orderly transfer of the licenses by the Trustee (after making the requisite *Second Thursday* showing to the Commission to bona fide third party broadcasters who would have the resources to provide programming to the subject stations for the benefit of the residents of these communities of license). It would also be consistent with the Commission’s avowed policy, as stated in the *AM Revitalization* proceeding, to undertake efforts to preserve the senior band’s relevance to the listening community. The instant proceeding is predicated on the question of whether the EMT license should be *cancelled*, which would mean the complete loss of four (4) AM radio stations in the St. Louis Metro

market,⁴ a result so shockingly contrary to the premise of *AM Revitalization* and the posture of the Chairman on the importance of AM radio in local communities that it begs for a stay, if for no other reason than to permit sale of the stations to qualified third parties who are committed to ensuring the continued operations of these AM stations.

12. **Abuse of bankruptcy allegation.** The Kern Opposition alleges that, because EMT has low debts relative to the theoretical value of its assets, EMT may be abusing the bankruptcy process. Such an inflammatory allegation must not stand. Nearly all of the asset value held by EMT is in the FCC licenses themselves, so it would make sense, in a functioning FCC licensee scenario, that EMT would simply sell one or more of these station licenses in order to satisfy outstanding obligations. But the EMT licenses have been tied up *since 2012* because of Mr. Kern, so it is rich that he would imply that EMT has options other than bankruptcy. It is well-established that the Media Bureau will not grant a voluntary assignment of license where the subject licensee has a license renewal application still pending, not to mention an unresolved transfer of control application. Certainly now that the stations' licenses are subject to a Hearing, sale of any of the stations is an impossibility – except by way of a sale in bankruptcy and approval by the FCC in a *Second Thursday* scenario. In addition, the value of the assets, because of these attendant proceedings, has been significantly diminished and will continue to diminish the longer the Commission proceeding continues, to the detriment of all creditors, including the Commission.⁵

⁴ While it has not officially stated this position, Media Bureau officials have indicated in informal conversations that it is now policy to not re-auction cancelled AM station licenses.

⁵ In addition to any potential forfeitures, the 2019 FCC regulatory fees for the broadcast licenses are due and owing to the Commission and cannot be paid until the Chapter 7 proceeding is completed and the Trustee distributes the proceeds from the sale of the assets. It is anticipated, therefore, that 2019 regulatory fees for the stations, in the amount of \$14,875.00 will go unpaid

13. Notwithstanding Mr. Kern’s fundamental misunderstanding of the law, bankruptcy law contemplates a debtor, such as EMT, with sufficient paper value to cover its debt that nonetheless cannot pay its debts as they come due. Technical insolvency occurs where a debtor may have substantial balance sheet assets, but those assets’ present *salable* value is small. “[I]f the *present salable* value of assets are less than the amount required to pay existing debts as they mature the debtor is insolvent.”⁶ For EMT, whatever its balance sheet indicates regarding its solvency (notwithstanding the fact that a current fair market valuation of these AM licenses would likely show they are worth significantly less now than when the licenses were acquired), almost all of EMT’s book value is tied to the value of its FCC licenses, which are currently not salable. Therefore, EMT is insolvent “based on its inability to pay its debts as they become due, [its] actual or constructive knowledge of its dire financial situation, and [its] lack of sufficient assets or capital to sustain its operations.”⁷

14. ***Second Thursday concerns.*** Trustee agrees with the Enforcement Bureau that evaluating whether sales of the EMT licenses to one or more third parties in the Chapter 7 proceeding will satisfy the Commission’s *Second Thursday* exception to the *Jefferson Radio* policy is putting the proverbial cart before the horse. EB Opposition at 5. In raising the specter of *Second Thursday*, EMT only meant to provide to the Presiding Judge insight into EMT’s thinking and the possible avenue for allowing liquidation of the licenses in bankruptcy. Both

as of the due date, September 24, 2019, and the automatic 25% late file will be applied, resulting in an additional debt of \$18,593.75 to the Commission.

⁶ *In re Mall at the Galaxy, Inc.*, Case No. 10-12435, 2019 WL 1522703 at *26 (Bankr. D.N.J. April 4, 2019) (citing *Moody v. Secuirty Pacific Business Credit, Inc.*, 971 F.2d 1056, n. 13 (3d Cir. 1992).

⁷ *Id.* at *27.

Oppositions are correct that EMT did not argue or present evidence to make the case for application of *Second Thursday*, and it intentionally did not do so, as such arguments would indeed have been premature. Moreover, the responsibility for determination of options for preserving and/or disposing the licenses at that point had shifted to the Trustee, who had not yet been brought up to speed on the proceeding affecting the assets newly under his control. Any *Second Thursday* arguments necessitated by future activity in the bankruptcy or in this proceeding will be made at the appropriate time.

15. **Conclusion.** As demonstrated herein, there is good cause for the Motion for Stay to be granted without delay.

RESPECTFULLY SUBMITTED,

_____/s/_____
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Dated: September 23, 2019

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In Re:	)	IN CHAPTER 7 PROCEEDINGS
)	
ENTERTAINMENT MEDIA TRUST,	)	BK 19-31224
)	
Debtor(s).)	
)	
DONALD M. SAMSON, Trustee,)	
)	
Movant,)	
)	
Vs.)	
)	
THE FEDERAL COMMUNICATIONS)	
COMMISSION,)	
)	
Respondent,)	

**EMERGENCY MOTION TO ENFORCE THE AUTOMATIC STAY OR IN THE
ALTERNATIVE ISSUE A STAY ORDER**

Comes now Donald M. Samson, trustee, and files this Emergency Motion to Enforce the Automatic Stay or in the alternative issue a stay order and in support thereof states as follows:

1. Donald M. Samson is the duly appointed and acting trustee in the above captioned bankruptcy.
2. Entertainment Media Trust filed its petition for Chapter 7 bankruptcy on September 11, 2019, which created an automatic stay pursuant to 11 U.S.C. 362 to any action including but not limited to enforcing control over property of the estate.
3. That debtor is the holder of four (4) Federal Communications Commission, (FCC) Broadcast licenses for local radio stations.
4. There is pending before the FCC in MC Docket No. 19-156 an action by the FCC to effectuate the forfeiture of the four (4) Broadcast licenses which are the primary assets with value to the estate.
5. The matter was initiated in 2012 by an application by Entertainment Media Trust to renew the Broadcast licenses and sat without action until recently when the action started moving at lightning speed by the FCC to deny the renewal of the licenses and cancel the licenses.

6. The four (4) licenses are currently valid and valuable, however the effect of a denial by the FCC to renew the licenses would result in the cancellation of the licenses and eliminate the most valuable assets in the estate.
7. There is a market for the licenses and the trustee has already been contacted by three (3) prospective purchasers.

WHEREFORE, Donald M. Samson, trustee, prays that the Court enter an order enforcing the automatic stay as to the pending FCC proceedings or in the alternative if the Court decides that the automatic stay does not apply, enter an order staying the pending FCC proceedings for a period of time deemed reasonable by this Court to allow for an orderly sale of the licenses and for such further relief as this Court deems just and equitable.

DATE: 09/20/19

/s/ Donald M. Samson
DONALD M. SAMSON, Trustee
226 W. Main St., Ste., 102
Belleville, IL 62220
618-235-2226

CERTIFICATE OF SERVICE

The undersigned certifies that on the 20th day of September, 2019, a copy of the foregoing document, Motion to Enforce the Automatic Stay, was served upon the following either electronically or by first class mail, postage prepaid:

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/s/ Andrew Chamness

CERTIFICATE OF SERVICE

I, Seth Williams, hereby certify that on this 23rd day of September, 2019, a copy of the foregoing Reply to Oppositions was served by email on the following:

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Courtesy copies of the foregoing were also provided by email to the following:

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/s/ Seth L. Williams
